

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

20 NOV -6 AM 10:26

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *[Signature]*
RECEIVED CLERK

LANI E. CLARK,
PLAINTIFF,

V.

LOIS KOLKHORST,
DEFENDANT.

§
§
§
§
§
§

CAUSE NO. 1:19-CV-198-LY

ORDER

Before the court in the above-styled and numbered cause are Defendant Lois Kolkhorst's Motion for Summary Judgment filed July 17, 2020 (Doc. #48), Plaintiff Lani E. Clark's Motion for Summary Judgment filed July 20, 2020 (Doc. #49), and related filings.

The motions and related filings were referred to a United States Magistrate Judge for report and recommendation. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. App'x C, R. 1(d). The magistrate judge signed a report and recommendation on October 20, 2020 (Doc. #53), recommending that this court deny Clark's summary-judgment motion and grant in part and deny in part Kolkhorst's summary-judgment motion. Specifically, the magistrate judge recommended that Clark's claims against Kolkhorst in her individual capacity should be dismissed, but Clark's First Amendment and Due Process claims against Kolkhorst in her official capacity should remain.

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within 14 days after being served with a copy of the report and recommendation and thereby secure *de novo* review by the district court. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that party, except upon grounds of plain error, from attacking or appealing the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

The record shows that all parties had notice of the report and recommendations by October 20, 2020, and that objections were due on or before November 3, 2020. Kolkhorst filed objections to the report and recommendation on October 26, 2020 (Doc. #54). Clark filed objections to the report and recommendation on November 2, 2020 (Doc. #55). In light of the objections, the court undertakes a *de novo* review of the record and applicable law.

The court is of the opinion that the objections do not raise any issues that were not adequately addressed in the report and recommendation. Therefore, finding no error, the court will accept and adopt the report and recommendation as filed for substantially the reasons stated therein. Accordingly,

IT IS ORDERED that Kolhorst's objections (Doc. #54) and Clark's objections (Doc. #55) to the report and recommendation of the United States Magistrate Judge are **OVERRULED**.

IT IS ORDERED that the report and recommendation of the United States Magistrate Judge filed October 20, 2020 (Doc. #53) is **ACCEPTED AND ADOPTED** by the court.

IT IS FURTHER ORDERED that Clark's summary-judgment motion (Doc. #49) is **DENIED**.

IT IS FURTHER ORDERED that Kolkhorst's summary-judgment motion is **GRANTED IN PART** and **DENIED IN PART**. The motion is **GRANTED** to the extent that Clark's claims against Kolkhorst in her individual capacity are **DISMISSED WITH PREJUDICE**. In all other respects, the motion is **DENIED**. Clark's First Amendment and Due Process claims against Kolkhorst in her official capacity remain.

SIGNED this 5th day of November, 2020.


LEE YEAKEL
UNITED STATES DISTRICT JUDGE